

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

JAMES N. McKELVEY,

Plaintiff,

v.

PETE GEREN, SECRETARY OF THE ARMY,

Defendant.

Case No. 5:07-cv-14538
Hon. John Corbett O'Meara
Magistrate Judge Mona K. Majzoub

/

**PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO IMMEDIATELY PAY
COURT ORDERED COSTS AND ATTORNEY FEES**

NOW COMES Plaintiff, James McKelvey, through his attorneys, and for his Motion to Compel Defendant to Immediately Pay Court Ordered Costs and Attorney Fees, submits as follows:

1. In 2013, this Court ordered Defendant to Plaintiff / Plaintiff's counsel costs and attorney fees in the total amount of **\$161,261.10¹**.
2. Though Plaintiff appealed the amount of the award representing the attorney fees incurred (\$122,000), the Sixth Circuit upheld said award on September 18, 2014 (Doc 143).
3. Though it has been well over four (4) months since the Sixth Circuit upheld this Court's award of costs and fees, Defendant has yet to tender said ordered proceeds.
4. Plaintiffs' counsel has made multiple calls and sent multiple emails to the US Attorneys requesting an estimated date on which payment can be expected. The only response provided was essentially "it will be paid when it gets paid".
5. Plaintiff and his counsel are entitled to the court ordered costs and fees.

¹ The Court awarded Plaintiff Taxable Costs of \$6,697.70 on 07/03/2013 (Doc 143), Expert Witness Fees of \$32,233.34 on 10/10/2013 (Doc 135), and Attorney Fees of \$122,000 on 02/26/2013 (Doc 127).

6. Defendant's "Judgment Fund" website represents that most electronically submitted claims are processed and paid within two weeks.

7. The Defendant has had almost five (5) months to process the payment of said court ordered costs and fees.

8. Plaintiff respectfully requests this Honorable Court to enter an Order directing as follows:

- a. That Defendant tender the court ordered costs and fees forthwith;
- b. That Defendant pay statutory interest on the amount of costs and fees from September 18, 2014, through the date the proceeds are finally tendered

WHEREFORE, Plaintiff requests this Honorable Court to enter an Order granting the relief requested herein.

Respectfully submitted,

/s/ Todd J. Weglarz
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Dated: January 28, 2015

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**BRIEF IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL DEFENDANT TO
IMMEDIATELY PAY COURT ORDERED COSTS AND ATTORNEY FEES**

For his Brief In Support, Plaintiff relies upon the representations, reasons, and arguments, set forth in his Motion to Compel.

WHEREFORE, Plaintiff requests this Honorable Court to enter an Order granting the relief requested herein.

Respectfully submitted,

/s/ Todd J. Weglarz
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Dated: January 28, 2015

PROOF OF SERVICE

Todd Weglarz, being first duly sworn, deposes and says that on the 28th day of January, 2015, he filed the foregoing with the United States District Court through the CM/ECF filing system which will electronically send copies of such filing upon the parties and counsel of record so registered with the U.S. Eastern District Court. Notice of the filing will be sent to the filing parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/Todd J. Weglarz
Todd J. Weglarz